

Attachment B

Recap of Tentatively Agreed Upon Actions and Resulting Changes to Language Contained in Draft 1 of the Restructured Water Supply Agreement

As of March 19, 2004, Agency has met individually with the following parties to the negotiation of the Restructured Water Supply Agreement:

- Town of Windsor,
- North Marin WD, and
- City of Rohnert Park
- City of Petaluma
- City of Sonoma and Valley of the Moon WD (Santa Rosa attended)
- Marin Municipal WD
- City of Cotati
- City of Santa Rosa

Tentative actions agreed to relative to the January Draft of the Restructured Water Supply Agreement grouped into three categories:

- Significant/Moderate
- Minor
- Forestville WD Issues

and are summarized below together with result as to how or each is treated in the new (2nd) draft or otherwise dealt with.

Lastly, follow-up tasks that need to be performed are listed.

Significant/Moderate

1.1 Purpose

Action: Agency will consider adding “. that reduces potable water use” after the words “water conservation and recycled water use”.

Result: Done.

1.2 (v) “recycled water projects” – One contractor, NMWD, thought the phrase at end of this definition, namely: “. . . or assists Agency to comply, in connection with its water supply activities, with the Federal and State ESA or any other environmental law or regulation.” was too broad. Another wants definition of recycled water project to be as broad as possible.

Action: NMWD will supply some alternative language for consideration.

Result: Awaiting language.

1.2 (v) “recycled water project”

Action: Agency agreed that definition should be expanded to make it clear that ground water investigations and studies are included.

Result: Done but language added in Section 2.6.

1.2 (dd) “Russian River Project” – One water contractor questioned what was meant by “and related works”.

Action: Agency will review this phrase with view of making clearer.

Result: Done.

1.2 (pp) “Water Conservation Project” – One water contractor pointed out exclusion re. recycled water projects may conflict with Agency’s Water Conservation Program contracts with some of the contractors (Petaluma for instance?).

Action: Agency will check and rework language as necessary.

Result: Done.

1.3 Term of Agreement

Action: Agency will restore language in 11th Amended Agreement committing Agency to renew agreement when it reaches full term.

Result: Done.

1.7 Pledge of Revenues

Action: Check language to be sure that water contractors are exposed to no greater liability if Agency sells bonds via a JPA.

Result: Agency attorney states definition of “revenue bonds” provides necessary protection.

2.2 Scheduling of Additions and Replacements to the Existing Transmission System (first paragraph)

Action: VOM, Sonoma and Agency agreed to delete approval requirement re. new parallel Sonoma Aqueduct.

Result: Done.

2.2 (3) Scheduling of Additions and Replacements to the Existing Transmission System

Action: Agency will clarify language in this section to make it clear that Agency can construct and acquire (purchase/lease) emergency wells. Also, Agency will consider whether it is necessary to add language to clarify that it can purchase water during emergencies.

Result: Done.

2.6 Recycled Water and Local Supply Projects

Action: Insert language that assures that any benefits resulting from recycled water projects are fairly distributed.

Result: Did not have time to devise appropriate language. Will be include in Draft 3.

2.8 (c) Watershed Planning and Restoration (re. voting arrangement)

Petaluma wants WAC vote to be unanimous.

Action: Agency will consider amending language to make it clear that while only benefited parties pay, a given benefited party has full discretion over whether or not to enter into a contract with the Agency and under what terms.

Result: Done.

3.1 Water Delivery Quantities and Limitations

Action: Agency will restore the term “entitlement(s)” in this section and every other place where it appears in the existing 11th Amended Agreement. Agency will also add a definition of entitlement to Section 1.2.

Result: Done.

3.1 (a) Delivery Entitlements of Water Contractors

Action: Agency will review this section and see if table can include/list all customers (MMWD, Other Agency, Forestville, etc.)

Result: Will prepare table but will be separate from contract.

3.1 (a) – re. Annual “Cap” included for Windsor

Action: Windsor is studying to see if the cap stated is adequate and will respond.

Result: Awaiting feedback from Windsor.

3.2 Conditions on Other Agency Customers

Action: Agency will include annual cap for Other Agency Customers.

Result: Will be added but yet to be calculated.

3.5 (a) Shortage of Water and Apportionment re. reference added to environmental laws and regulations and alternative for WAC to agree on allocation

Action: Agency will review necessity of apparently redundant new language added regarding “environmental laws and regulations”.

Result: Agency reviewed and attorney advises language should be included as drafted.

Action: Agency will insert a proviso with regard to allocation of water to its Russian River customers that will provide that Agency will take into consideration individual water rights that said customers have now or in the future.

Result: Done.

Action: Include language giving WAC option to determine how water will be allocated in a shortage based on Agency’s determination as to how much water will be available.

Result: Done. See Section 3.5 (d)

3.5 (a) Shortage of Water and Apportionment

Action: Agency will consider eliminating consideration of local supply when allocating available water (Sonoma argued equity issue re investing in local supply and being penalized during shortage).

Result: Agency believes this is a consideration more properly dealt with in the new MOU.

3.5 (a) and (b) Shortage of Water and Apportionment – re. allocation of water

Action: Agency will restore entitlement language in both of these sections. Also, in Section (b), Agency will consider eliminating separation of headworks from rest of Transmission System. Also, general language will be added that will allow Agency to take water conservation (demand hardening) and recycled water status of contractors into account when allocating water.

Result: Done. Additional work yet to be done on making consideration of water conservation (demand hardening) more explicit.

3.5 (c) Shortage of Water and Apportionment – re. new penalty charge

Action: Rohnert Park supported this charge as drafted. NMWD is reviewing whether penalty should be included at all or be set much higher. Cotati considering amount.

Result: Language left unchanged for now.

3.12 Marin Municipal Water Deliveries

MMWD opposed proviso adding condition that MMWD must pay for Petaluma Aqueduct to assure service.

Action: MMWD will provide some alternative language for the Agency and WAC to consider.

Result: Awaiting feedback from MMWD.

4.14 Operation and Maintenance Charge - Watershed Planning and Restoration

Big issues. Contractors want to see expenditure history (including where funds came from in the past to meet these expenses) and projected costs and sources of funding. Concerned about Agency withdrawing historic use of Agency tax revenues.

Action: Agency, to introduce some certainty regarding this charge, will limit charge to \$35/ac-ft for first three years with provision that thereafter the charge will be reviewed and increased or decreased as needed to meet expected costs. Also include language that assures Agency will identify beneficiaries and propose appropriate funding.

Result: Done. Also, Agency will prepare an analysis showing history of costs and funding sources and a projection showing the same thing. (Agency estimates it will need about \$2 million dollars per year over the next three years.)

4.15 Operation and Maintenance Charge – Recycled Water and Local Supply

Action: Agency will revisit and consider inserting more explicit language spelling out this charge (refer to draft presented to parties which fixed this charge and provided for subsequent change up or down). Consider starting with current amount.

Result: Charge fixed at \$35/af for first year.

4.6 Aqueduct Facilities Capital Charges.

Action: Agency will add language that will provide for replacement of Intertie Aqueduct as well.

Result: Done.

Minor

1.2 Definitions (format preference)

Action: Agency will consider using all capital letters throughout the agreement to distinguish all explicitly defined terms.

Result: Agency attorney will use capital letters on definition terms that tend to be confused. Did not have time to do this in 2nd Draft. Will do in 3rd Draft.

1.2 (x) “remaining facilities”

Action: Agency will check to see if list of facilities is accurate and up-to-date.

Result: Pam Jeane will do this. Corrections, as necessary will be included in 3rd Draft.

1.2 (cc) “Russian River Customers”

Action: Agency will add names of existing Russian River Customers.

Result: Pam Jeane will do this. Names will be included in 3rd Draft.

1.2 (v) “recycled water project”

Action: Agency will consider adding phrase that emphasizes expectation that all beneficiaries (not just water contractors) should pay for recycled water projects.

Result: Agency attorney states language is explicit and needs no further revision.

1.4 Previous Agreements

Action: Agency will add language referencing all three previous (existing) agreements with Town of Windsor.

Result: Agency attorney will do this. Names will be included in 3rd Draft.

1.8 Books, Records and Accounts

Action: In 4th line, Agency will delete outdated reference to “special account held by County Treasurer.....”.

Result: Done.

1.8 Books, Records and Accounts

Action: Agency will amend new language beginning on line 5 to also call out new sub-accounts being created for recycled water/local supply projects, water management planning, and watershed planning and restoration.

Result: Done.

1.12 Water Conservation

Action: Agency will revise out of date language re. “metering requirement” as all water contractors are now metered. General requirement will remain as requirement for future customers but language pertaining to Rohnert Park will be deleted.

Result: Done.

1.14 (a) (1) Transitional Provisions re. Forestville

Action: Agency will clarify what is meant by “storage building”.

Result: Pam Jeane will do this. Expanded language will be included in 3rd Draft.

2.6 (a) Recycled Water and Local Supply Projects

Concern that only water contractors who don’t benefit by a given project may be responsible for O&M costs.

Action: Agency will review language to see if change is necessary.

Result: Agency attorney reviewed and states language as currently drafted is explicit and provides the necessary protections.

2.7 Water Management Planning

Action: Consider deleting last sentence.

Result: Did not have time to confer on this. Will address in Draft 3.

4.1 and 4.6 re. Aqueduct Charges

Several contractors have misunderstood and assumed that separate aqueduct charges will no longer be in place.

Action: Add language to Sections 4.1 and 4.6 (b) calling out the names of the separate aqueduct charges that will/could emanate from the provisions of 4.6.

Result: Done.

4.1 Charges

Action: Agency will consider necessity of adding a paragraph making it clear the following charges do not apply to direct diversions from the Russian River: O&M Charge, Aqueduct Facilities Capital Charge, Storage Facilities Charge and Common Facilities Charge.

Result: Agency attorney reviewed and states language as currently drafted is explicit and provides the necessary protection.

4.2 (c) Operation and Maintenance Charge

Action: Agency will check to see whether the reference “subsection (d) of section 4.7” in the 14th line should be changed to “subsection (c) of section 4.7”.

Result: Done.

4.6 (b) Aqueduct Facilities Capital Charges

Concerned that Potter Valley obligations may be included erroneously here because of reference to Section 4.5 in line 6.

Action: Agency will check language and clarify that intent here is to include aqueduct replacement costs financed by revenue bonds.

Result: Reference checked and is ok.

4.8 (c) Common Facilities

Action: Agency will check to see if last sentence in subsection (c) conflicts with new language of Section 1.7.

Result: Reference checked and is ok.

4.9 (c) North Marin Capital Charges.

Action: Agency will check to see if last sentence in subsection (c) conflicts with new language of Section 1.7.

Result: Reference checked and is ok.

Forestville WD Issues

The Agency and a group of Water Contractors will be meeting with FWD to resolve the following issues.

1.6 (c) Amendments

Action: Seek to revise the language with the purpose of eliminating the need for Forestville to sign-off on amendments while at the same time assuring preservation of Forestville's entitlement.

1.14 (a) (3) Transitional Provisions Applicable to Forestville re. 1800 ft pipeline subsidy for Forestville.

Action: Discuss this subsidy with Forestville.

3.5 (a) Shortage of Water and Apportionment re. Forestville primacy issue

Every contractor was opposed to Forestville having primacy over primes.

Action: Seek language that would more fairly position Forestville's historic entitlement relative to other Water Contractors vs. current draft, which gives Forestville priority over all water contractors.

Follow-up Tasks

1. Agency will prepare an analysis showing history of costs and funding sources and a projection showing projected costs and funding sources.
2. Agency will explain how encumbrances on individual approved construction projects are handled from one year to the next and where they show up in budget.
3. Agency will work with Town of Windsor to modify its three agreements with Windsor parallel with negotiation/adoption of the Restructured Water Supply Agreement and make sure that revised agreement(s) between Agency and Windsor will provide that Windsor will use best efforts to secure and perfect its own Russian River water rights for the water it directly diverts.
4. NMWD will have Section 1.7 Pledge of Revenues reviewed by independent counsel.

5. Come up with acceptable methodology re. consideration of water conservation (demand hardening) in allocating water.
6. MOU Negotiation matters:
 - Should add clause to MOU stating commitment of parties to determine how water will be allocated during a drought.
 - Consider ignoring local supply capability in allocating 92 mgd of new headworks capacity.
 - Appropriate resolution of demand hardening issue.